

**DOCKET NO. 2024-0133-IWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>SCHREIBER FOODS, INC.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>FOR TLAP NO. WQ0003074000</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**APPLICANT’S RESPONSE TO HEARING REQUEST**

Schreiber Foods, Inc. (“Applicant”) files this Response to Hearing Request regarding the contested case hearing request made by Tandi Remy on the referenced Application for TLAP No. WQ0003074000. For the reasons stated herein, Applicant requests that the Texas Commission on Environmental Quality (the “Commission”) deny the hearing request and issue final approval of the Application and Draft Permit.

**I. OVERVIEW OF APPLICANT’S FACILITY**

Applicant operates the Schreiber Food facility located at 923 County Road 176, Stephenville, Erath County, Texas. Since 2002, Applicant has been a major part of Erath County’s dairy industry and community, with over six hundred full-time employees helping process local milk produced into specialty dairy foods, including cream cheese.

For more than twenty years, Applicant has operated its facility with due regard to its neighbors and the environment, maintaining an excellent compliance history. Applicant is now seeking a major amendment of its existing Industrial Wastewater Permit. Through its Application, Applicant seeks to (1) increase the application acres from 50 acres to 61 acres, (2) increase the average daily flow from 132,000 gallons per day to 192,000 gallons per day, (3) amend the organic loading rate measured as biochemical oxygen demand (5-day), and (4) amend the nitrogen loading rate measured as total nitrogen.

**II. PROCEDURAL HISTORY**

Applicant submitted its application for a major amendment on February 6, 2023 (the “Application”), and it was declared administratively complete on March 21, 2023. Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in the *Stephenville Empire Tribune* on March 29, 2023. The Executive Director completed the technical review of the Application on May 30, 2023, and prepared the proposed permit (the “Draft Permit”), which if approved, would establish the conditions under which the facility must operate. Applicant published the Notice of Application and Preliminary Decision in the *Stephenville Empire Tribune* on August 24, 2023. The comment period for the Application closed on September 25, 2023. The deadline for requesting a contested case hearing closed on November 22, 2023.

Only two comments were submitted regarding the Application—one from Tandi Remy (the “Requestor”) and one from Kaitlin Sowle.<sup>1</sup> As addressed in the Executive Director’s Response to Comments, the Requestor’s comment was as follows:

**COMMENT 1:**

Tandi Remy comments that she is concerned with the sewage smell coming from the Schreiber Foods facility. She states that the smell of sewage increased with the addition of the second pond and that the smell is affecting her enjoyment of her home and her business. She seeks a solution to the smell, such as adding trees.

The Executive Director responded and addressed these concerns, stating, among other things, that:

- Part IV of the draft permit, Conditions of the Permit, includes effluent limitations for the organic loading rate at 100 lbs/acre/day. Effluent limitations are also included for the following parameters which should preclude the occurrence of nuisance conditions related to odor as a result of the wastewater disposal activities at this facility ...
- ... Part V. of the draft permit, Special Provisions, Item M prohibits the occurrence of nuisance conditions resulting from wastewater disposal activities at this facility. Nuisance conditions include, but are not limited to, excessive odor from wastewater disposal activities.... If the regional investigator documents a violation of TCEQ regulations or conditions included in the TCEQ permit, then appropriate action will be taken.

Importantly, the Executive Director made no changes to the proposed permit as a result of Requestor’s comment.

On November 16, 2023, the Requestor filed a request for contested case hearing with the Commission, stating:

I have an RV Park directly behind the Schreiber Foods two holding tanks. I have looked online and emailed for a map of the plans for the new site. The information is not clear as the only map is of the Schreiber property which I understand where that is. I have concerns and would like to be able to ask questions about their plans and progress. Currently the smell of raw sewage is strong when we get a breeze from the East. Our concern is if the new plans will eliminate those smells or make them worse. The sewage smell concerns me for my business and health. I am requesting a Contested Case Hearing. Please help me get answer prior to approving this permit. My husband and I live on the North side of the RV Park directly behind the Schreiber Foods property.

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<sup>1</sup> Kaitlin Sowle did not file a request for hearing.

As set forth herein, Applicant urges the Commissioners to deny Requestor's hearing request because she is not an affected person and does not have a statutory right to a hearing on the Application. Applicant respectfully requests that the Commissioners approve the Application and issue the Draft Permit.

### **III. RESPONSE TO HEARING REQUEST**

#### **A. Applicable Law**

Chapter 26 of the Texas Water Code governs water quality permits in Texas, authorizing the Commission to "issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state." Tex. Water Code § 26.027(a). The Commission is required to provide public notice of a permit application under Chapter 26 and under certain circumstances hold a public hearing on the application. *Id.* § 26.028(a), (c), (h). While any person may provide public comment on a pending water quality permit application, only those who are also "affected persons" may obtain a public hearing. *Id.* § 26.028(c).

For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Tex. Water Code § 5.115(a); 30 Tex. Admin. Code § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* In determining whether a person is an "affected person," the Commissioners may consider a variety of factors, which may include, but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 Tex. Admin. Code § 55.203(c). In addition to the foregoing factors, the Commission may consider the following in making an "affected person" determination: 1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance; 2) the analysis and

opinions of the Executive Director; and 3) any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the Applicant, or a hearing requestor. *Id.* § 55.203(d). In addition to being an affected person, a requestor must timely file a written request for a contested case hearing that identifies the person's personal justiciable interest affected by the permit application and list all relevant and material disputed issues of fact that were raised during the public comment period and that form the basis of the hearing request. 30 Tex. Admin Code § 55.201(a), (c), (d)(2), (4); *see also* Tex. Water Code § 5.556(d).

For permit amendments, a contested case hearing is not available for a minor amendment to an existing permit. 30 Tex. Admin. Code § 55.201(i)(1). Notably, there is also no express right to a contested case hearing for a major amendment to a permit. *See id.* § 55.201(i)(5). Although chapter 26 of the Water Code sets forth a general basis for granting a public hearing when requested by an affected person, it also provides exceptions to the general rule. The Water Code expressly exempts from the public hearing requirement an application to amend or renew a water quality permit that does not seek to either "increase significantly the quantity of waste authorized to be discharged" if "the activities to be authorized...will maintain or improve the quality of waste authorized to be discharged," along with other requirements. Tex. Water Code § 26.028(d). This exception applies notwithstanding a requestor's status as an "affected person." *Tex. Comm'n on Env. Quality v. City of Waco*, 413 S.W.3d 409, 419-20 (Tex. 2013).

After a hearing request is filed on a permit application, the applicant may submit a written response to the hearing request. 30 Tex. Admin. Code § 55.209(d). An applicant's response to a hearing request must specifically address the following:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application;  
and
- (7) a maximum expected duration for the contested case hearing.

*Id.* The Commission may grant an application without a public hearing if it finds that the requestor is not an affected person, that the hearing request did not comply with the statutory or regulatory requirements, or that the permit application is exempt from the public hearing requirement under Tex. Water Code § 26.028(d).

## **B. Requestor is Not Entitled to a Hearing on the Application**

### **1. Requestor is not an "affected person."**

Requestor is a neighboring landowner to Applicant's facility. Requestor's sole basis for seeking a hearing is the *potential* for occasional odors that she believes originate from Applicant's facility. Requestor makes only generalized statements regarding her concerns about intermittent odors that change with the wind direction. Requestor does not allege any specific impacts to her health or her property from Applicant's operations. Requestor does not identify any part of the Application that she disputes or otherwise contends will negatively impact her health, property, or will cause or contribute to the presence of nuisance odors on her property. These generalized concerns about the facility do not constitute a sufficient basis for finding that Requestor is an affected person. Requestor's concerns are no different than any concern raised by a member of the general public, which precludes a contested case hearing on the Application. *See* 30 Tex. Admin. Code § 55.203(a). In the end, Requestor has not demonstrated that she has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application. *See id.*

The Applicant's sworn Application provides 347 pages of data, calculations, expert reports, specifications, photographs, maps, plans, and information to support the permit amendment and demonstrate that the proposed changes to the facility and operations fully comply with the applicable statutes and regulations. *See generally* Application, dated Jan. 11, 2023.<sup>2</sup> The Application was carefully reviewed by the subject matter experts at the Commission, and on May 31, 2023, the Executive Director's staff issued its Technical Summary and Executive Director's Preliminary Decision proposing that all amendment requests be granted, providing a Draft Permit, and stating that the Draft Permit "if issued, meets all statutory and regulatory requirements." *See* Technical Summary and Executive Director's Preliminary Decision, dated May 31, 2023, which is on file with the Commission and incorporated by reference herein for all purposes.

The Draft Permit itself provides numerous provisions requiring best practices that adequately prevent nuisance conditions, including nuisance level odors. *See* Draft Permit, which is on file with the Commission and incorporated by reference herein for all purposes. These provisions include, but are not limited to the following:

1. Effluent limitations and sampling requirements (Draft Permit, § IV);

Parameter	Daily Average, mg/L	Daily Maximum, mg/L	Frequency	Sample Type
Flow	192,000 gpd	Report, gpd	1/day <sup>1</sup>	Flow Meter
Chloride	Record	N/A	1/6 months	Grab
Sodium	Record	N/A	1/6 months	Grab
Total Phosphorus	Record	N/A	1/6 months	Grab
Total Dissolved Solids	4000	N/A	1/6 months	Grab
Total Suspended Solids	650	N/A	1/6 months	Grab
Biochemical Oxygen Demand (5-day)	Record	N/A	1/week	Grab
Oil and Grease	N/A	15	1/week	Grab
Total Nitrogen	Record	N/A	1/week	Grab
pH, Standard Units (SU)	6.0 SU, min	9.0 SU	1/day	Grab

<sup>2</sup> Because of the size of the Application, Applicant has not attached the Application to this Response to Hearing Request but incorporates the Application as filed with the Commission by reference herein for all purposes.

2. Increased land application area to 61 acres (Draft Permit, § V.B);
3. Prohibits discharge of any pollutant and requires wastewater disposal system to be designed and operated to prevent occurrence of nuisance conditions (Draft Permit, § V.C, V.V);
4. Requirement that Applicant maintain permanent crops over irrigated areas (Draft Permit, § V.F);
5. Requiring buffer zones around lagoons and between land application areas and property line (Draft Permit, § V.G);
6. Irrigation practices must be designed and managed to prevent contamination of ground or surface waters and prevent occurrence of nuisance conditions (Draft Permit, § V.M); and
7. Prohibiting irrigation within twenty-four hours after a measured rainfall of 0.5 inches or greater or to any zone containing standing water to avoid ponding (Draft Permit, § V.O).

Applicant has an excellent compliance history related to its operations. Requestor has not shown that there is any likely impact from Applicant's regulated activity on her health and safety or the use of her property. Requestor has owned the adjacent property since 2017, and there has been no documented complaint or violation by Applicant of TCEQ regulations or conditions in its existing permit from 2017 to the present. To the extent Requestor has concerns about odors resulting from Applicant's facility, this is an issue for enforcement of the permit conditions if such conditions arise and not a basis for a contested case hearing on this Application. Requestor is not an affected person, and her hearing request should be denied.

**2. Requestor does not have a statutory right to a hearing because the Application is exempt from the public hearing requirement.**

Even if Requestor were an affected person, she does not have a statutory right to a hearing on this Application. The Commissioners have discretion to approve an application to renew or amend a permit without the necessity of holding a public hearing if the following circumstances are met:

- 1) applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge;
- 2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;
- 3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and
- 4) the commission determines that an applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of its permit.

Tex. Water Code § 26.028(d); *City of Waco*, 413 S.W.3d at 424-25. This provision applies to the Application and is a further basis for denying the Requestor's hearing request.

The Application is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. Rather, Applicant is seeking by this amendment to increase its daily average process flow and to increase the acreage on which it applies the treated wastewater from its facility. Further, the increase acreage of its land application areas does not materially change the pattern or place of discharge. In fact, the increased acreage results in a lower volume per acre application than the current authorization.

This case is similar to the *City of Waco* case in that although there is an increase in the requested process flow from the facility, because of the stringent permit requirements and land application limitations, the activities to be authorized by the Draft Permit will maintain or improve the quality of waste authorized to be discharged. *See City of Waco*, 413 S.W.3d at 424-25. The Draft Permit includes standard and special conditions that ensure sufficient storage capacity in the lagoons at the facility, the amount of water irrigated and land applied is over a larger area of land, maintenance of permanent crops on the land application areas, avoidance of practices that can result in ponding, and prohibiting maintenance or operation of the waste disposal system that creates nuisance conditions. *See generally* Draft Permit. Moreover, the Application has complied with the requisite public notice requirements, and the Executive Director responded to Requestor's public comment in its Response to Public Comment filed on October 17, 2023. Finally, the Applicant's compliance history is excellent and does not raise any issue regarding Applicant's ability to comply with its permit. A true and correct copy of the Applicant's Compliance Rating from the TCEQ database is attached hereto as Exhibit A and incorporated by reference herein for all purposes. Under these facts, the Commissioners may approve the Application without the necessity of granting a public hearing. Requestor's hearing request should be denied. *See Tex. Water Code* § 26.028(d); *City of Waco*, 413 S.W.3d at 424-25.

### **C. Applicant's Further Response to Hearing Request**

#### **1. Which issues raised in the hearing request are disputed.**

The main issue raised by Requestor is her unspecified complaints about past odors coming from Applicant's permitted lagoons. As these are issues that are (1) addressed by the permit and can be handled through enforcement, (2) there has been no documented violation of TCEQ regulations or conditions contained in the TCEQ permit, and (3) Applicant has an excellent compliance history, Applicant disputes these issues and maintains there is no basis for a contested case hearing in this proceeding.

#### **2. Whether the dispute involves questions of fact or of law.**

Requestor's issues raised appear to involve a disputed mixed question of fact and law. To the extent that the Commissioners determine that a contested case hearing should be granted, Applicant maintains that the only issue to be referred for hearing is whether the Draft Permit includes sufficient protections against nuisance level odors.

#### **3. Whether the issues were raised during the public comment period.**

The issues raised by the Requestor in her hearing request are substantially the same as those raised in her public comments, which were responded to in the Executive Director's Response to Comments. Notably, as mentioned above, following addressing the comments, the Executive Director made no changes to the proposed permit.

**4. Whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.**

Applicant is not aware of Requestor withdrawing her public comments.

**5. Whether the issues are relevant and material to the decision on the Application.**

For the reasons stated above, Applicant does not believe that the issues raised by Requestor in her public comments and previously addressed by the Executive Director are relevant or material to the decision on the Application and would respectfully request that the Commission issue final approval of the Application. Requestor's comments are unspecified regarding events in the past and are not tied to the terms and conditions of the proposed Draft Permit.

**6. A maximum expected duration for the contested case hearing.**

Applicant maintains that a contested case hearing is neither merited nor appropriate on the Application. Nonetheless, it responds that should a contested case hearing be granted on the Application, a hearing should not exceed 100 days.

#### **IV. CONCLUSION AND PRAYER**

Applicant operates its facility with integrity and in a manner that meets or exceeds the requirements of its permit. The Application seeks to make certain changes to ensure Applicant's facility continues to operate in the best manner possible and in full compliance with the requirements of applicable law and its permit. Requestor raises only generalized concerns about odor and does not meet the requirements of an affected person. The Draft Permit contains numerous conditions and requirements that protect against nuisance level odors. Moreover, the Application falls within the exception to a public hearing requirement under section 26.028(d) of the Texas Water Code. Accordingly, Applicant respectfully requests that the Commission deny the hearing request and issue final approval of the Application.



Respectfully submitted,

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**ATTORNEYS FOR APPLICANT  
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**CERTIFICATE OF SERVICE**

I certify that on April 1, 2024, the “Applicant’s Response to Hearing Request” for renewal of Permit No. WQ0003074000 by Schreiber Foods, Inc. was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

/s/ James D. Bradbury

James D. Bradbury

MAILING LIST/LISTA DE CORREO  
Schreiber Foods, Inc.  
TCEQ Docket No./TCEQ Expediente N.º 2024-0133-IWD TPDES  
Permit No./TLAP Permiso N.º WQ0003074000

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See list on next page:

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INTERESTED PERSON(S)/PERSONA(S) INTERESADA(S):

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## **EXHIBIT A**

TCEQ Compliance History Search

Your search returned 1 records. The Customer's overall compliance history is displayed below.

1-1 of 1 Records

CN ▲	Customer Name	Rating	Classification	Date Rated
CN602630972	SCHREIBER FOODS INC	0.00	HIGH	09/01/2023

1-1 of 1 Records

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